



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

932 WRIT PETITION NO. 9506 OF 2014

1. Leelabai Ananta Kandekar,
2. Ansayabai Sarjerao Laate,
3. Sushilabai Kisan Tapkir.

...Petitioners

Versus

1. Smt. Jijabai Dnayndeo Gade,
2. Laxmikant Dnayandeo Gade,
3. Vishwas Rakhmaji Walke,
4. Shahaji Rakhmaji Walke,
5. Sau. Nalini Dashrat Gade,
6. Dashrat Krushna Gade.

...Respondents

...
Advocate for the Petitioners : Mr.Yuvraj Kakade i/b Gaware Niteen V.
Advocate for Respondents No.1,2,5,6: Mr. R. R. Karpe
...

CORAM : R. M. JOSHI, J.

Dated : June 19, 2024

PER COURT :-

1. Heard. By consent of both sides, petition is heard finally at the stage of admission.
2. The petitioners are plaintiffs in Regular Civil Suit No.151/2004 and being aggrieved by rejection of application Exhibit 75 for the production of documents, present petition is filed.
3. Learned Counsel for the petitioners submits that from the pleading of the plaint it is clear that the suit is filed by the plaintiffs

for partition and separate possession thereof with specific averments that the suit properties are joint family properties of the plaintiffs and defendants. It is specifically averred in paragraph No.4 of the plaint that the suit properties stood in the name of Bayaji Rama Gade as the 'Karta' of the family. The allegation is that later on deceased Dnayndeo has got those properties mutated in his name by playing fraud. It is his contention that in the light of these averments, if the documents sought to be placed on record are absolutely relevant for the decision of the controversy in question before the Trial Court. It is his submission that the Trial Court has also not recorded any findings about the documents being not relevant, and therefore, not allowed to be placed before the Court. By relying upon the Judgment of the Hon'ble Supreme Court in case of ***Billa Jagan Mohan Reddy vs. Billa Sanjeeva Reddy, reported in 1994 (4) SCC 659***, he submits that the Trial Court has committed error in not permitting to place the relevant documents on record as no prejudice would have been caused to the defendants by doing so.

4. Learned Counsel for respondents/defendants supported the

impugned order with submission that once the plaintiffs makes a specific statement that the documents concerned were sought to be obtained earlier and were not received, it is incumbent on their part to prove the said contention by leading evidence. It is his submission by referring to the impugned order that this have become a ground for rejection of the application and that no perversity is found therein.

5. Hon'ble Supreme Court in Case of **Billa Jagan Mohan Reddy** (Supra) at paragraph No.4 has made following observations : -

"(4).....It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and when the court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 Civil Procedure Code the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect they may have, be considered in deciding the issue arising in the controversy. Under

these circumstances, the trial court was not justified in refusing to condone the delay and to receive the documents. The High court also committed the same error in not considering the effect in this behalf in the right perspective. The orders are accordingly set aside and the delay in filing the documents is condoned. The trial court is directed to receive the documents, give an opportunity to the parties to prove the documents and if necessary, opportunity to the respondent to rebut the same and then dispose of the reference according to law."

6. It is held that the position of law is settled to say that if the documents are found to be relevant to decide the real issue in controversy and felt that interest of justice requires that the documents may be received, such documents even can be allowed to be placed on record at the stage of final arguments. As far as present case is concerned, perusal of the plaint indicates that specific plea has been raised by plaintiff with regard to the suit property being joint family properties standing in the name of the 'Karta', and further allegations made against others. In this regard, if the documents sought to be placed on record are perused, then by no stretch of imagination it can be said that the documents are

not relevant for the purpose of deciding the lis between the parties.

7. Merely because the plaintiffs have not led any evidence showing attempts made to get the documents on record, that cannot become a sole ground for rejection of the application. It is relevant to note that the learned Trial Court has not recorded any finding with regard to the relevant documents for deciding any application for production of document. It is the relevancy of the documents which should be given a foremost consideration for by any Court in order to allow or reject its production. The Trial Court has ignored the said vital aspect. As a result of this, the impugned order cannot be sustained. However, since the application is filed at belated stage for production of documents, the said application Exhibit 75 is allowed with costs of Rs.5000/- payable to the State. The petition is allowed in the aforesaid terms.

8. As the suit is pending since 2004, the Trial Court is directed to decide the same within six months.

9. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)

vj gawade/-.